IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 30TH JULY, 2007 / 8TH SRAVANA, 1929

WP(C).No. 18576 of 2007(J)

PETITIONERS:

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1. NIYYATHUR AZEEZ, S/O. KUNHALAN,
   AGED 46 YEARS, P.O.KALLARMAGALAM, MARAKKADA,
   MALAPPURAM DISTRICT.

2. P.MUHAMMEDKUTTY, S/O. KUNHIPOCKER,
   AGED 52 YEARS, P.O.KADAMPUZHA, MALAPPURAM DISTRICT

3. N.M.VELAYUDHAN NAIR,
   THEKKENIYEDATH HOUSE, P.O.MARAKKARA,
   MALAPPURAM DISTRICT.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS:

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1. THE DISTRICT COLLECTOR, MALAPPURAM.

2. THE REVENUD DIVISIONAL OFFICER, TIRUR.

3. THE TAHSILDAR, TIRUR.

4. PATHUMMAKUTTY, AGED 52 YEARS,
   W/O. RAYIN, THEKKINIYAKATH HOUSE, P.O. MARAKKARA,
   MALAPPURAM DISTRICT.

R1 TO R3 BY SPL.GOVT. PLEADER SRI.P.K.BABU.
BY ADV. SRI.JACOB SEBASTIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP(C) NO. 18576 OF 2007)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the complaint dtd.3.4.2007 to the 1st respondent..

Ext.P2: Copy of the complaint dtd.3.4.07 to the 2nd respondent.

Ext.P3: Copy of the petition dtd.6.4.07 submitted by the petitioners before the S.I.of Police.

Ext.P4: Copy of the stop memo issued by the Village Officer.

Ext.P5(a): Copy of letter of Velukutty to counsel for the petitioners.

Ext.P5(b): Copy of letter of Achuthan to counsel for the petitioners.

Ext.P5(c): Copy of letter of Anitha to counsel for the petitioners.

RESPONDENTS' EXHIBITS:

Ext.R4(a) Copy of the sketch pertaining to the property.
Series:
Ext.R4(b)
series: Copy of the 4 photographs of the property.

Ext.R4(c): Copy of the affidavit dtd.23.7.2007.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

WP(C) NO. 18576 OF 2007 - J

Dated this the 30th day of July, 2007

J U D G M E N T

The petitioners claim to be residents of Marakkara Village in Tirur Taluk in Malappuram District, doing agricultural operations in their paddy lands and living on agricultural income, therefrom. They filed a complaint before respondents 1 and 2 to take action against fourth respondent for illegal conversion of paddy land which is situated near to their paddy land. The third respondent issued a stop memo against the construction activities in the fourth respondent's land. In spite of the same, the fourth respondent is continuing with the construction activities is the grievance of the petitioners. The petitioners therefore seek the following reliefs:-

> "i. Issue a writ of mandamus or any other writ, order or direction directing the respondents 1 to 2 to consider Ext.P1 and P2 and take necessary action against the 4th respondent for violating the stop memo and take steps to ensure that the illegal construction made by her is demolished and the land restored to its original position;

> ii) pass such further orders, as this Hon'ble Court may be pleased to grant on the facts and circumstances of the case;"

2. The fourth respondent has filed a counter affidavit in which she has stated that the property in question ceased to be a paddy land for more than 50 years. According to her, there is no paddy land anywhere near her property. She has also produced photographs to show that there is absolutely no hint of any paddy land anywhere near the property in question. She therefore submits that the entire exercise is mala fide and no right whatsoever of the petitioners, has been violated in the matter. Respondents 1 to 3 also have filed a counter affidavit in which they would submit that on enquiry, it was found that the fourth respondent has been converting land without permission as required under the Kerala Land Utilisation Order. The fourth respondent has also produced Ext.R4(a) sketch of the properties which also would go to show that all the surrounding properties are garden lands with buildings constructed thereon.

3. I have heard the parties. On a perusal of Ext.R4(a) sketch and Ext.R4(b) photographs, the correctness of which

none of the parties before me, disputes. It is abundantly clear that the property is a garden land and that there is no paddy land anywhere. Therefore, if at all, once these lands were paddy lands, now permission under the Kerala Land Utilisation Order is nothing but a formality, refusal of which would amount to discrimination against the fourth respondent.

4. In the above circumstances, I direct the fourth respondent to file an application before the second respondent under the Kerala Land Utilisation Order, who shall consider and pass orders on the same in accordance with the observations contained in this judgment. Such application shall be filed within two weeks from the date of receipt of a certified copy of this judgment and the second respondent shall pass orders thereon within a month therefrom after hearing all parties concerned. The fourth respondent can continue constructions, in the mean while.

The writ petition is disposed of as above.

Sd/-

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007